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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,498	04/02/2004	Bruce L. Bruso	36522-195046	3149

23973 7590 11/30/2004
DRINKER BIDDLE & REATH
ONE LOGAN SQUARE
18TH AND CHERRY STREETS
PHILADELPHIA, PA 19103-6996

EXAMINER

KRECK, JOHN J

ART UNIT PAPER NUMBER

3673

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/817,498

Applicant(s)

BRUSO, BRUCE L.

Examiner

John Kreck

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WJ

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on ____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, and 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruso (U.S. Patent number 5,830,752) in view of the New Jersey Department of Environmental Protection Historic Pesticide Contamination Task Force "Findings and Recommendations for the Remediation of Historic Pesticide Contamination".

Bruso teaches the step of employing a mobile blending apparatus to vertically mix soil to reduce concentration of contaminants. Bruso also teaches the running through the area under conditions sufficient to blend.

Bruso fails to teach the blending with clean soil. Bruso fails to teach determining a volume of clean soil.

The New Jersey document teaches that blending contaminated soil with clean soil is acceptable in certain cases, for example, to reduce historic pesticide residue to levels below the environmentally acceptable target. See, e.g. page 24, "Remedial Option 3" and "Remedial Option 4". The New Jersey document also teaches in that section that "if contaminant levels are very elevated...large amounts of clean soil would be needed"; thus implicitly teaching the step of determining a requisite volume of clean soil.

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It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the Bruso process to have blended clean soil with contaminated soil; and to have included a step of determining as called for in claim 1; in order to dilute pesticides in the soil.

The New Jersey document teaches the soil on top of the surface layer ("Remedial Option 2") as called for in claim 2.

The New Jersey document teaches the soil from offsite as called for in claim 3.

Bruso teaches the moving the blending apparatus as called for in claim 6.

Bruso teaches the moving the blending apparatus as called for in claim 7.

The New Jersey document teaches the pesticide as called for in claims 8-10.

Regarding independent claim 11:

Bruso teaches the step of employing a mobile trencher apparatus to lift and churn soil to reduce concentration of contaminants. Bruso also teaches the running through the area under conditions sufficient to blend.

Bruso fails to teach the blending with clean soil. Bruso fails to teach the mapping. Bruso fails to teach the determining depth and average concentration. Bruso fails to teach determining a volume of clean soil.

The New Jersey document teaches that blending contaminated soil with clean soil is acceptable in certain cases, for example, to reduce historic pesticide residue to levels below the environmentally acceptable target. See, e.g. page 24, "Remedial Option 3" and "Remedial Option 4". The New Jersey document also teaches in that

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section that "if contaminant levels are very elevated...large amounts of clean soil would be needed"; thus implicitly teaching the step of determining a requisite volume of clean soil. The New Jersey document also teaches the mapping (p. 24 first paragraph-- "site layout and construction plans") and determining depth and concentration (page 26, third paragraph).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the Bruso process to have blended clean soil with contaminated soil; and to have included a step of mapping and step of determining depth and average concentration, as called for in claim 11; in order to dilute pesticides in the soil.

Regarding independent claim 12:

Bruso teaches the step of employing a mobile blending apparatus to vertically mix soil to reduce concentration of contaminants. Bruso also teaches continuing running and moving .

Bruso fails to teach the blending with clean soil. Bruso fails to teach the determining and marking. Bruso fails to teach determining a volume of clean soil.

The New Jersey document teaches that blending contaminated soil with clean soil is acceptable in certain cases, for example, to reduce historic pesticide residue to levels below the environmentally acceptable target. See, e.g. page 24, "Remedial Option 3" and "Remedial Option 4". The New Jersey document also teaches in that section that "if contaminant levels are very elevated...large amounts of clean soil would be needed"; thus implicitly teaching the step of determining a requisite volume of clean

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soil. The New Jersey document also teaches the determining and marking (p. 24 first paragraph-- "site layout and construction plans")

It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the Bruso process to have blended clean soil with contaminated soil; and to have included determining, as called for in claim 12; in order to dilute pesticides in the soil.

Regarding independent claim 13:

Bruso teaches the step of using a mobile blending apparatus to mix soil to reduce concentration of contaminants. Bruso also teaches advancing.

Bruso fails to teach the blending with clean soil. The New Jersey document teaches that blending contaminated soil with clean soil is acceptable in certain cases, for example, to reduce historic pesticide residue to levels below the environmentally acceptable target. See, e.g. page 24, "Remedial Option 3" and "Remedial Option 4".

It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the Bruso process to have blended clean soil with contaminated soil; as called for in claim 13; in order to dilute pesticides in the soil.

Bruso also teaches a modified trencher as called for in claim 14.

Bruso also teaches a large volume trencher as called for in claim 15.

2. Claims 1, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer (U.S. Patent number 6,422,789) in view of the New Jersey Department of

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Environmental Protection Historic Pesticide Contamination Task Force "Findings and Recommendations for the Remediation of Historic Pesticide Contamination".

Brewer teaches the step of employing a mobile blending apparatus to vertically mix soil to reduce concentration of contaminants. Brewer also teaches the running through the area under conditions sufficient to blend.

Brewer fails to teach the blending with clean soil. Brewer fails to teach determining a volume of clean soil.

The New Jersey document teaches that blending contaminated soil with clean soil is acceptable in certain cases, for example, to reduce historic pesticide residue to levels below the environmentally acceptable target. See, e.g. page 24, "Remedial Option 3" and "Remedial Option 4". The New Jersey document also teaches in that section that "if contaminant levels are very elevated...large amounts of clean soil would be needed"; thus implicitly teaching the step of determining a requisite volume of clean soil.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have used the Brewer process to have blended clean soil with contaminated soil; and to have included a step of determining as called for in claim 1; in order to dilute pesticides in the soil.

Brewer also teaches the mobile apparatus excavates soil as called for in claim 4.

Brewer also teaches the mobile apparatus backfills soil as called for in claim 5.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is (703)308-2725. The examiner can normally be reached on M-F 5:30 am - 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (703)308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John Kreck
Examiner
Art Unit 3673

**JOHN KRECK
PRIMARY EXAMINER**

JJK